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DOL/ILAB FOR TINA MCCARTER; DRL/ILCSR FOR TU DANG

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TAGS: [ELAB](#) [EIND](#) [ETRD](#) [PHUM](#) [SOCI](#) [USAID](#)  
SUBJECT: CHILD LABOR INFORMATION FOR GSP 2008 REPORT

REF: 08 STATE 127448

¶1. Reftel requested information on new developments regarding child labor in Australia's overseas territories, of which there are three inhabited territories: Norfolk Island, Christmas Island, and the Cocos Islands. There has been no change over the past year regarding Australia's implementation of laws and regulations relating to child labor in these territories.

¶2. For DOL's information, responses for Norfolk Island, keyed to the questions in para 9 in refTEL, that were provided by the Government of Australia, follow in para 3 below. For Christmas Island and Cocos Island, see para 4 below.

¶3. Norfolk Island

A) Laws and regulations proscribing the worst forms of child labor.

There is no minimum age for admission to work but employment of children under the age of 15 years is subject to statutory limitations under Section 24 of the Employment Act 1988 (Norfolk Island).

Section 20(2)(b) of the Employment Act enables employment contracts to be entered into or varied despite the legal incapacity of either the employer or employee to enter into a contract.

Section 13(1)(b) prescribes the minimum wages to be paid to persons under the age of 16 years, 16 and under 17 years, as well as 17 and under 18 years where the employee is aged less than 18 years.

Assuming the reference to 'hazardous work' to be a reference to the definition in Article 3(d) of the Convention as set out in clause 1 of the Chief Minister's submission above, Part 4, Sections 48 to 64 (Safe Working Practices) of the Employment Act set out the statutory duties and penalties in regard to employers and employees in regard to workplace health and safety issues.

Employment Inspectors and Child Welfare officers are appointed by law (the latter under the Child Welfare Act 1937) to monitor and take action in regard to the protection of workers (particularly those under 18 years of age).

The Norfolk Island Government notes the definition in Article 3 of the worst forms of child labor as comprising (and therefore limited to) the following:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for

prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

It is noted that child or children are, for the purposes of the convention all persons under the age of 18 years: see Article 2.

Slavery or practices similar to slavery generally (and therefore including in relation to children) is a serious offense under Section 268.10 - Crime against Humanity - enslavement, Section 268.15 - Crime against Humanity - Sexual Slavery, Section 268.60 - War Crime - sexual slavery, 268.83 - War Crime - sexual slavery (non-international conflict), Section 270.2 - slavery is unlawful, Section 270.3 - slavery offenses of the Criminal Code Act 1995 (Commonwealth) which by section 3A applies to Norfolk Island. Under the Criminal Code Act 2007 (Norfolk Island), slavery as such is not defined as a specific territory offense but sexual servitude (defined as a specific territory offense but sexual servitude is a serious offense under Section 138 of that Norfolk Island law (as it is under Section 270.6 of the Criminal Code Act 1995).

The sale and trafficking of children and debt bondage would generally be covered by the Criminal Code Act 1995 and by relevant offenses under the Immigration Act 1980 (Norfolk Island) in regard to false or misleading documents and information being provided or for persons entering the territory for illegal purposes. Section 271.4 of the Criminal Code Act 1995 makes trafficking in children a serious offense punishable by up to 25 years imprisonment (which law is applicable to Norfolk Island by section 3A of that Code). It is also an offense to traffic in children between one place in Australia and another (see Section 271.7 - domestic trafficking in children).

In regard to forced labor, the Norfolk Island Government noted that the Employment Act governs the employment of persons under 18 years and requires that such persons (with the consent of their parents) can only be employed on the basis of written agreements with strict conditions as to the availability and freedom of the child for schooling and education, medical needs and withdrawal of labor upon notice. A child might only be compelled to perform work as part of a community service condition of a release upon probation order issued by a court upon a juvenile offender under the Child Welfare Act 1937 (Norfolk Island) or where the child is directed to perform work whilst in court ordered detention or imprisonment arising from a court sentence imposed upon such a child according to law applicable to the territory. In such circumstances, the Norfolk Island Government would rely upon the judgment and powers of the relevant correctional officers and authorities for a determination of the type and period of work appropriate to each particular child under their control in the circumstances.

In accordance with Article 3 (b), the use or offering of any child for prostitution, pornography or for pornographic performances is in each instance a serious offense under the laws applicable to Norfolk Island: see Section 268.16 - Crime Against Humanity - Enforced Prostitution, Section 268.61- War Crime - Enforced Prostitution -International Conflict, Section 268.84 - War Crime - Enforced Prostitution - Non-international conflict, Section 474.20 - production of child pornography material for use in offense of using carriage service for child pornography material) of the Criminal Code Act 1995 and see also Part 3.7, Sections 122 to 126 of the Criminal Code Act 2007 in regard to offense of using child for production of child pornography etc.

In regard to recruitment of children for armed conflicts, the Criminal Code Act 1995 creates serious offenses in regard to compulsory or forced recruitment of children for armed

conflicts (see Section 102.4 (recruiting for a terrorist organization), Section 268.68 - War Crime - conscripting or enlisting children (under 15 years) for international conflict, Section 268.88 - War Crime - conscripting or enlisting children (under 15 years) for non-international conflict, which are offenses applicable to Norfolk Island by virtue of the application of the Criminal Code Act 1995 to Norfolk Island. It should be noted however that the recruitment of children for school-based or junior volunteer cadet training units (where such units are not generally expected or required to participate in any armed conflict) is considered lawful where cadets are part of the Australian Cadets Corps established under the Defense Act 1903 (Commonwealth) where it is applicable to Norfolk Island.

It should be noted that Section 5A of the Defense Act 1903 states: "This Act extends to the external Territories as if each of those Territories were part of Australia." see Section 18(1), Norfolk Island Act 1979 (Commonwealth).

Section 59 (c) makes person ages between 18 years and 60 years who have resided Australia for not less than 6 months Qyears who have resided Australia for not less than 6 months liable to be called for service in the defense force in time of war if called upon under Section 60.

Section 62 governs the establishment and use of the Australian Army Cadets (formerly the Australian Cadet Corps)

Section 118B relieves apprentices who voluntarily enlist to serve in the defense forces in time of war from liability or legal action due to a breach of their articles of apprenticeship (what happens to persons called by allotment to compulsorily serve under section 60 is not clear).

Under Regulation 7 of the Cadet Forces Regulations 1977 (Commonwealth), the minimum age for Army and Navy Cadets is 12 years and 6 months while the minimum age for Air Force Cadets is 13 years.

The Naval Defense Act 1910 (Commonwealth) extends to every Territory: Section 5A.

The Air Force Act 1923 (Commonwealth) extends to every Territory: Section 4.

B) Regulations for implementation and enforcement of proscriptions against the worst forms of child labor.

The Norfolk Island Government, in consultation with the Commonwealth of Australia and with relevant employer and worker representatives will consider and determine as appropriate from time to time what other activities might comprise work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children under Article 3( d) having regard to the lists of such work to be developed, examined and revised from time to time under Article 4 of the Convention.

In regard to Articles 5, 6 and 7, the Norfolk Island Government in cooperation with the Commonwealth of Australia shall use its best endeavors within the funding and resources available to it from time to time to encourage, facilitate and promote the implementation, development of programs, and education regarding the provision of the convention within the territory.

Given the small geographic and population size of the Norfolk Island community, and violations or abuses in regard to child labor or child exploitation are expected to be quickly detected and reported for investigation and action.

The Norfolk Island Government allocates the level of resources appropriate within the constraints of its budget for the purposes of enforcement of the Employment Act and Child Welfare Act as well as for employment or appointment of appropriate inspectors.

There have been no known cases or reports of child labor

abuse or exploitation to date so far as the Government of Norfolk is aware such that no child labor investigations were required to be conducted over the past year.

C) Whether there are social programs specifically designed to prevent and withdraw children from the worst forms of child labor.

N/A.

D) Does Norfolk Island have a comprehensive policy aimed at the elimination of the worst forms of child labor?

The Education Act 1931 (Norfolk Island) expressly prevents the charging of fees for provision of education except for persons over 15 years of age for teaching of any special subject outside the normal course and for teaching in evening classes: see Section 14, Education Act.

Section 16 and 18 of the Education Act imposes a statutory duty on parents to cause the attendance of school aged children at a public or private school registered under the Education Act.

E) Is Norfolk Island making continual progress toward eliminating the worst forms of child labor?

N/A

**14. Responses for Christmas Island and Cocos Islands:**

Child labor laws in force in the state of Western Australia apply to the Indian Ocean Territories. The Children and Community Services Act 2004 and the School Education Act 1999, are laws in effect in the state of Western Australia that cover child labor. The federal Workplace Relations Act of 1996 is also extended to the Indian Ocean Territories.

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